

**Government of the District of Columbia**

**ZONING COMMISSION**



ZONING COMMISSION ORDER NO. 591

Case No. 88-8C

(PUD & Map @ H Street Overpass)

October 17, 1988

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on July 14, 1988. At that hearing session, the Zoning Commission considered an application from the Potomac Development Corporation, on behalf of the H Street Overpass Associates, for consolidated review and approval of a Planned Unit Development (PUD) and related map amendment, pursuant to Sections 102 and 2400 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of Chapter 30 of that Title.

FINDINGS OF FACT

1. The original application, which was filed on March 17, 1988, requested consolidated review and approval of a PUD and change of zoning from C-1 to C-2-A for lot 45 in Square 752.
2. The PUD site is presently split-zoned C-1 and C-2-A, is located on the south side of the 200 block of H Street, N.E., and comprises 34,444 square feet of land area. The site is some what isolated at its location, being bounded by the H Street Overpass on the north and the railroad track facing Union Station on the west.
3. The major portion of the site is presently being used as a surface commercial parking lot. A smaller portion of the suite is occupied by two abandoned buildings which are proposed to be demolished.
4. On April 11, 1988, at its regular monthly meeting, the Zoning Commission authorized the scheduling of a public hearing for the application, and determined that it would consider a C-3-A rezoning alternative.
5. The applicant proposes to construct a mixed-use office, retail and residential development. By preparing submission, dated May 19, 1988, the applicant amended

its application by requesting rezoning from C-1 and C-2-A to C-2-B.

6. The C-1 District permits matter-of-right low density development including office, retail and residential uses to a maximum height of forty feet/three stories, a maximum floor area ratio (FAR) of 1.0 and a maximum lot occupancy of sixty percent for residential uses.
7. The C-2-A District permits matter-of-right low density development, including office, retail, housing, and mixed uses to a maximum height of sixty-five feet, maximum FAR of 3.5 for residential and 1.5 for other permitted uses, and a maximum lot occupancy of eighty percent for residential uses.
8. The C-2 District permits matter-of-right medium density development, including office, retail, housing, and mixed uses to a maximum height of sixty-five feet, a maximum FAR of 3.5 for residential and 1.5 for other permitted uses, and a maximum lot occupancy of eighty percent for residential uses.
9. The C-3-A District permits matter-of-right development for major retail and office uses to a maximum height of sixty-five feet, a maximum FAR of 4.0 for residential and 2.5 for other permitted uses, and a maximum lot occupancy of seventy-five percent for residential uses.
10. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to impose development conditions, guidelines and standards which exceed or are lesser than the matter-of-right standards. The PUD guidelines for development in the C-2-B zone district permit a building height of 90 feet and a 6.0 FAR.
11. The Generalized Land Use Map of the Land Use Element of the Comprehensive plan for the National Capital shows the subject site for medium density commercial and production and technical employment uses.
12. The subject site is located in Ward 2 which encompasses substantial parts of the downtown and adjacent areas, including a portion of the H Street corridor. The area surrounding the subject site is characterized by a mixture of uses and zone categories. Commercial zoning and development is concentrated along H Street to the north, west and east, and also in the Union Station commercial area.
13. The PUD site occupies the north portion (approximately 1/3) of Square 752. The remainder of the square, to the south of the site, is zoned C-1 and R-4. The

squares to the south and east of the site are zoned R-4 and are predominantly occupied by two and three-story townhouses and small two-story commercial buildings. Additional uses in these squares include retail (food markets, dry cleaners, service restaurants) and residential uses.

14. The squares to the west of the site are zoned C-M-3 (including Union Station) and C-3-C on the portion of H Street abutting the west side of the H Street Overpass. Immediately to the north of the H Street corridor, the property is zoned C-M-1 and R-4 and is characterized by a mix of industrial/retail uses and additional residential use. To the east of the site along H Street is additional C-2-A zoning.
15. The applicant proposed to construct a mixed use project including office, retail and residential uses. The proposed development has a floor area ratio (FAR) of 3.67 of which 2.75 FAR is devoted to commercial use and 0.92 FAR will be residential. The height of the proposed structure ranges from 44 feet to 82.5 feet. A total of 158 parking spaces will be provided on three levels to serve both the residential and office portions of the project. The Zoning Regulations require 68 on-site parking spaces.
16. The project will contain approximately 80,896 square feet of floor area devoted to office use and 5,516 square feet of floor area devoted to retail use. The residential component will contain 28 dwelling units and will consist of approximately 34,720 square feet, including the residential recreation space located on the roof level. The project will have six floors devoted to office use, two floors devoted to residential use, and one floor devoted to retail use.
17. As originally proposed, the project was to be built to a height of 86.5 feet as measured from the H Street Overpass. Eight stories were to be located on the commercial portion of the building and two stories on the residential side. Pursuant to comments made at the time the case was scheduled for public hearing, the applicant revised the plans by lowering the height of the commercial by one story and increasing the height of the residential building by one story. The applicant also amended the plan to show the use of 3rd Street as the point of measurement. Pursuant to the revised plan, the building ranged from a height to 44 feet along the residential side to height of 82.5 feet along the commercial side. The applicant also revised the plan to eliminate the retail use along 3rd Street and to add two additional residential units to the project.

18. The proposed PUD was planned and designed to provide additional housing opportunities in a central location of the District of Columbia, to enhance the permanent character and stability of the neighborhood through the improvement of an undeveloped site, to provide jobs for city residents in addition to rental estate, income and sales taxes, and to provide maximum achievement of the PUD goals of superior design and environment through the site plan approval process. The project is a brick and concrete structure with separate entrances for the office, retail and residential components. The office portion of the project is located in the west section of the building. There will be six floors of office and one floor of retail in the west component of the building. Roof terraces will be available for use by commercial tenants.
19. The applicant proposed the following benefits and amenities not available under the existing zoning but attainable through the PUD process:
  - a. Mixed use development, combining living and working opportunities in the same project;
  - b. New residential development of 34,720 square feet providing 28 units, with a variety of unit sizes and types;
  - c. Implementation of City and Comprehensive Plan objectives for the H Street corridor;
  - d. Improvement of adjacent spaces;
  - e. Superior streetscape design;
  - f. Elimination of an existing surface parking lot;
  - g. Coordinated superior design and building material sensitive to the transitional nature of the site and its "gateway presence";
  - h. Increased tax revenues and creation of jobs for new development with additional costs;
  - i. A Minority Business Opportunity Commission Memorandum of Understanding regarding minority contracting opportunities created by the PUD plan;
  - j. A Department of Employment Services First Source Agreement regarding job opportunities created by the PUD Plan;
  - k. Approximately 4200 square feet of Incubator module space for small businesses at reduced rental will

be reserved for five years for a rental of 50% of the market rate (approx. \$7.50 per square foot) with rent increasing no more than \$1.00 per square foot over the five-year period; and

1. A transportation management program to include a Rideshare Program coordinated with the D.C. Rideshare coordinator.
20. The applicant, through testimony presented at the public hearing by its land planner, indicated that the following:
- a. The PUD is an appropriate means of development for the site;
  - b. The proposal meets the goals, intent, and objective of 11 DCMR 2400;
  - c. The proposal is compatible with the neighborhood; e.g., height, bulk and use;
  - d. The proposal is not inconsistent with the Comprehensive Plan for the National Capital.

The applicant requested that flexibility be granted for certain design details of the project.

21. The District of Columbia Office of Planning (OP) by memorandum dated June 30, 1988 and by testimony presented at the public hearing, recommended that the application be approved. OP stated the following:

"The Office of Planning believes that the proposal is meritorious for this location. The proposal has a strong housing component which will benefit the city. The office/retail component will attract people to this area as well as provide a range of employment opportunities. This development will also carry out policies in the Comprehensive Plan related to development near the Union Station Metro Station. The proposed development will enhance the area as well as its future development."

22. The District of Columbia Department of Public Works (DPW), by memorandum dated July 1, 1988, indicated the following:
- a. The level of parking supply is adequate to service the development without adversely impacting the local on-street parking supply;
  - b. The volume of traffic will not have any adverse impact on the surrounding street system;

- c. There is adequate water supply to service the development; and
- d. The area is served by a combined sewer system which, while adequate for sanitary services, is inadequate for storm water.

DPW believes that the developers should install a storm-water management system to control the rate of storm-water run-off from the site.

- 23. The Metropolitan Police Department (MPD) by memorandum dated July 12, 1988, indicated that the Police Department did not expect the PUD plan to generate any substantial increase in the need for police services.
- 24. The District of Columbia Department of Finance and Revenue (DFR) by memorandum dated July 1, 1988, has no objections to the proposal.
- 25. The District of Columbia Office of Business and Economic Development (OBED) by memorandum dated July 11, 1988, recommended the following:
  - a. The Business Incubator Program (BIP) proposed by the applicant be expanded from five to ten years;
  - b. The 2400 square foot space proposed by the applicant for the BIP be increased; and
  - c. A ceiling of \$5.00 per square foot for expenses be set for new businesses wanting to locate at the project with a \$.50 per year maximum increase being allowed.

OBED indicated that information regarding community-oriented retail space, job creation, and tax generation was lacking. It recommended that the developer coordinate with OBED regarding the streetscape design for the H Street frontage.

- 26. Reports from the D.C. Public Schools, the Department of Housing and Community Development, and the Fire Department were not included into the record, having been received untimely.
- 27. Advisory Neighborhood Commission - 2C, by letter dated July 7, 1988, did not object to the proposal after having resolved concerns regarding the following:
  - a. reduction in height and density at the rear of the project closest to the residential area on Third Street;

- b. redirection of the garage exhaust fan; and
  - c. reduction in commercial FAR.
28. Ann Morrow, Berny Hints, and Patrick Lally were three parties in support of the application. Two of the three parties were residents of Square 752 and the third party was a resident of Square 772 directly across 3rd Street from the PUD site. All three parties supported the density and height, the change in zoning, the proposed mix of uses and the amenities proposed as part of the application.
  29. Councilmember John A. Wilson, Ward 2, by letter dated July 13, 1988 supported the PUD project.
  30. The H Street Community Development Corporation by letter dated July 13, 1988, indicated its support for the PUD application. In particular, it commended the applicant for its proposed Incubator Space Program.
  31. Stanton Park Neighborhood Association by letter dated July 13, 1988, indicated its support for the PUD application and the proposed Transportation Management Program. The Association commended the developer and its architect for their sensitivity and responsiveness to the Association's concerns.
  32. The Capitol Hill Restoration Society by letter dated July 13, 1988, indicated its support for the PUD application and commended the applicant for its superior design and its Transportation Management Program.
  33. There were several additional letters in support of the application filed at the public hearing.
  34. There was one statement in opposition to the application filed in the record. The opposition expressed a concern about the change in zoning requested and in particular the precedential impact this case would have on other properties in the area. The opposition also filed a petition in opposition signed by some residents.
  35. The Commission finds that the applicant has met the intent and purpose of the Zoning Regulations and further finds that the proposal is suitable for the site, and that the design, height, density, and scale are compatible with the subject neighborhood.
  36. The Commission concurs with the recommendation of the OP, and the positions of ANC-2C, DPW, MPD, DFR, and others.

37. As to the concerns of DPW regarding storm water run-off, the Commission believes that it has adequately addressed the matter in its decision.
38. As to the concern of OBED regarding the business incubator space and related amenities, the Commission finds that the applicant's program proposal (inclusive of floor area, rental cost, rental increases and length of term) is appropriate.
39. As to the concern of ANC - 2C regarding density and height of the rear of the site, venting of garage exhaust, and FAR reduction, the Commission finds that these concerns have been resolved or adequately addressed in its decision.
40. As to the concern regarding the precedence of a change of zoning and potential related impact, the Commission is mindful that each case is considered on its own merits and does not serve as precedent for future projects or applications.
41. As to the request for design flexibility by the applicant, the Commission finds that such request is not unreasonable.
42. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia self government and Government Reorganization Act. The NCPC, by report dated October 14, 1988 indicated that the proposed action the Zoning Commission would not adversely affect the federal establishment or other federal interests in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital.

#### CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate means of controlling development of the subject site, because control of the use and site plan is essential to ensure compatibility with the neighborhood.
2. The development of this PUD carries out the purpose of Section 2400 to encourage the development of well planned residential, institutional and mixed use developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.



3. The development of this PUD is compatible with city-wide goals, plans and programs, and is sensitive to environmental protection and energy conservation.
4. Approval of this application is not inconsistent with the Comprehensive Plan of the District of Columbia.
5. The approval of this PUD application is consistent with the purposes of the Zoning Act.
6. The proposed application can be approved with conditions which ensure that the development will not have an adverse affect on the surrounding community, but will enhance the neighborhood and ensure neighborhood stability.
7. The approval of this application will promote orderly development in conformity with the entirety of the District of Columbia Zone Plan as embodied in the Zoning Regulations and Map of the District of Columbia.
8. The Zoning Commission has accorded to the Advisory Neighborhood Commission (ANC) 2C the "great weight" to which it is entitled.

#### DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the District of Columbia Zoning Commission hereby orders approval of this application for consolidated review of a Planned Unit Development ("PUD") for Lot 45 in Square 752 in the northern third of the square located at 2nd and 3rd & H Streets, N.E. The approval of this PUD is subject to the following guidelines, conditions and standards:

1. The Planned Unit Development ("PUD") shall be developed in accordance with the plans submitted by Amy Weinstein and Associates, Architects, marked as Exhibits 27 and 52C, as modified by the guidelines, conditions and standards of this order.
2. The PUD site shall be developed with a mixed use structure which will contain a mixture of office, retail, and residential uses.
3. All retail uses shall be neighborhood-serving.
4. The building shall have six floors devoted to office use, two floors devoted to residential use, and one floor devoted to retail use.
5. The height of the building shall range from 44 feet to no more than 82.5 feet, as measured from 3rd Street, N.E.

6. The percentage of lot occupancy for the building shall not exceed 69.2 %.
7. The overall floor area ratio (FAR) for the PUD site shall not exceed 3.65 FAR. The floor area ratio for the commercial component shall not exceed 2.64 FAR. The floor area ratio for the residential component shall not exceed 1.01 FAR.
8. The number of residential dwelling units shall not be less than 24 nor exceed 32.
9. The building shall contain no less than 157 parking spaces, as shown on the plan marked as Exhibit No. 52C. One parking space will be assigned to each of the residential units. Parking spaces shall be used for no use other than the parking of motor vehicles. Access ailses, size of parking spaces, driveways, maneuvering areas and other parking garage features shall meet the requirements of the Zoning Regulations.
10. Loading activity shall take place in the location shown on the plans marked as drawing no. 6 of Exhibit No. 52C.
11. The venting of the parking garage exhaust shall not be discharged toward 2nd, G, or 3rd Street, N.E.
12. Streetscape improvements shall be provided as shown on the plans marked as Exhibit No. 52C.
13. The applicant shall provide roof terraces for the users of the commercial and residential components.
14. Building materials for the project shall be similar to that of the Daniel Burnham Express Building and shall consist of a dark gray or black base brick for the first two stories of the office structure, and part of the first story of the residential portion. The majority of the building above shall be red brick with limestone trim, and the top floor of the office structure shall be treated as an attic story with red clay tile hung on the vertical surface.
15. No building permit shall be issued until the applicant has resolved the storm water management system issue to the satisfaction of the Department of Public Works.
16. The applicant shall implement the First Source Agreement with the Department of Employment Services, filed in the record as part of Exhibit 52A.
17. The applicant shall implement the Memorandum of

Understanding with the Minority Business Opportunity Commission, filed in the record as part of Exhibit No. 52A, and commit to make a bona fide effort to achieve, at a minimum, the goal of 35% minority participation.

18. The applicant shall provide 4200 square feet of space which shall be designated for the Business Incubator Space Program on the plans filed with the Zoning Administrator as part of the building permit application. With the exception of the floors devoted to residential uses, the location of this space may be varied so long as 4200 square feet of space shall be available for the first five years of the project as part of the Business Incubator Space Program.
19. The applicant shall implement the Transportation Management Program, as described in the Exhibit 52A.
20. The applicant is granted flexibility in the final detailing of the building with respect to the following matters:
  - a. Varying the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, location of elevators, electrical and mechanical rooms, so long as the variations do not change the exterior configuration of the building, including the penthouse;
  - b. Varying the design and arrangement of components within the enclosure of the penthouse;
  - c. Varying the arrangement of the parking spaces and modification to the below grade space to provide the opportunity for storage and other space to serve the proposed users of the building, subject to Condition No. 9 of this order; and
  - d. Allowing the flexibility permitted, pursuant to the provisions of 11 DCMR 2407.6.
21. The selection of the facade and window detailing, and the exterior materials within the color ranges and materials types proposed, as well as the location and type of exterior lighting fixtures and species of plant material for the building shall be subject to the final approval of the Commission. The applicant shall submit samples of the above-mentioned items to the Commission for approval prior to installation and prior to applying for a certificate of occupancy. No certification of occupancy shall be issued until the Commission has approved the above-mentioned. This will not delay the applicant in obtaining the necessary

District of Columbia approvals including, but not limited to, subdivision, building permits, or the like, or from beginning construction of the building;


22. No building permit shall be issued for this Planned Unit Development until the applicant has recorded a Covenant in the Land Records of the District of Columbia between the owner and the District of Columbia and satisfactory to the Office of the Corporation Counsel and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs (DCRA), which covenants shall bind the applicant and successors in title to construct on and use the PUD site in accordance with this order or any amendments thereto of the Zoning Commission.
23. The change of zoning from C-1 and C-2-A to C-2-B for the PUD site shall be effective upon recordation of said covenant, pursuant to 11 DCMR 2406.12.
24. The Zoning Secretariat shall not release the record of when the covenant is recorded in the Land Records of Case No. 88-8C to the Zoning Regulations Division until the applicant has filed a certified copy of the covenant in the record of the Zoning Commission.
25. The Planned Unit Development approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within that time, application must be filed for the building permit, as specified in 11 DCMR 2407.2 and 2407.3. Construction shall start within three years of the effective date of this Order.


Vote of the Zoning Commission taken at the public hearing on July 14, 1988: 4-0 (Lindsley Williams, John G. Parsons, Elliott Carroll and Maybelle Taylor Bennett, to approve with conditions - Patricia N. Mathews, not present, not voting).

This order was adopted by the Zoning Commission at its public meeting on October 17, 1988, by a vote of 4-0 (Elliott Carroll, John G. Parsons, Lindsley Williams and Maybelle Taylor Bennett, to adopt as amended - Lloyd D. Smith, not voting not having participated in the case).

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In accordance with 11 DCMR 3028, this order is final and  
effective upon publication in the D.C. Register; that is on  
02 DEC 1988.

  
MAYBELLE TAYLOR BENNETT  
Chairperson  
Zoning Commission

  
EDWARD L. CURRY  
Executive Director  
Zoning Secretariat

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